

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.105, the Environmental Protection Commission (Commission) hereby adopts new Chapter 17, “Compliance and Enforcement Procedures,” Iowa Administrative Code.

The purpose of Chapter 17 is to affirm the variety of compliance and enforcement documents the Department of Natural Resources (Department) may consider using in responding to possible violations of environmental statutes, rules, permits, licenses, certifications, and plans. The Department has used these or similar procedures for many years, and this chapter simply formalizes this practice.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 21, 2012, as **ARC 0051C**, and a public hearing was held on April 23, 2012. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on May 16, 2012, as **ARC 0126C**, extending the public comment period to August 16, 2012. A second Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 2012, as **ARC 0182C**, adding three additional public hearings and providing more information on the Department’s intended implementation for the proposed rules.

Summary: Public Comments and Response to Comments

The Department received a total of 909 comments on the proposed rule making; 842 comments were written comments, and 67 comments were oral comments provided at the four public hearings.

The public participation responsiveness summary prepared by the Department is available on the Department’s Web site on the Environmental Protection Commission page. (Go to <http://www.iowadnr.gov/InsideDNR/BoardsCommissions/EnvironmentalProtectionEPC.aspx> and click on the link for the meeting information for January 15, 2013.) In addition, the public participation responsiveness summary, an Excel spreadsheet with the logged comments, the written transcripts of the public hearings, and a link to an FTP site with access to all written comments are available from the Department’s Web site at <http://www.iowadnr.gov/idnr/InsideDNR/RegulatoryAir/StakeholderInvolvement/PublicInput.aspx>.

Most of the comments submitted were opposed to the proposed rules and commented that the proposed rules would weaken the Department’s ability to enforce environmental requirements. These commenters expressed concern that the new rules favor large industrial or agricultural interests and that the Department will not fine or penalize those who violate rules or permits established to protect public health and the environment. The commenters were particularly concerned about manure spills, fish kills, and impacts to water quality but also expressed concern about weakened enforcement of all environmental regulations. The majority of comments opposed to the rule making advocated for the termination of the rule making.

The Department carefully considered the comments asserting that the rules in Chapter 17 will weaken the Department’s enforcement of environmental regulations, including regulations applicable to animal feeding operations. The Department continues to be fully committed to taking appropriate enforcement action in response to violations, including entering into administrative consent orders or issuing administrative orders that assess penalties and require corrective action, and recommending that the Commission refer violations to the Attorney General.

The new chapter simply illustrates how the Department already works with regulated entities to ensure that regulated entities understand how environmental requirements apply to them, how to comply with these requirements, and what the consequences are if they violate these requirements. Additionally, the rules in the new chapter in no way preclude the Department or the Commission from pursuing administrative enforcement as specified in 567—Chapter 10, referral to the Attorney General, or other enforcement actions allowed under Iowa statute.

The activities and compliance documents in this chapter are not intended to be a hierarchy of the Department’s actions in response to a specific violation, nor are these activities intended to be mutually

exclusive. A listed activity may not be appropriate for a specific violation. The listed activities are meant to be tools that the Department may use, and use of these tools is solely at the Department's discretion.

Further, the Department has attempted to illustrate the circumstances under which the Department would typically apply the specific compliance activities included in the proposed chapter. The Department provided examples, which are not inclusive of all possible scenarios or Department actions, in the second Amended Notice of Intended Action (**ARC 0182C**, available at <https://www.legis.iowa.gov/DOCS/ACO/IAC/LINC/ARC.0182C.pdf>). The Department is committed to further improving its implementation procedures to ensure a clear and appropriate compliance and enforcement response to environmental violations.

The Department also received comments in support of Chapter 17. In general, the supportive comments expressed that the proposed new chapter would allow the Department to use a wider range of communication options for notification of noncompliance issues and would allow the Department to exercise fair discretion for a wide variety of circumstances in several different areas of environmental protection. Other comments suggested that the proposed rules would improve the cooperation of regulated entities and prevent violations.

To address comments received, the Commission made a change to adopted Chapter 17 from what was proposed in the Notice of Intended Action (**ARC 0051C**). A new sentence is added at the end of rule 567—17.3(455B) and reads as follows: “Nothing in this chapter adds to or takes away from the appeal rights provided in Iowa Code chapter 17A.” This new language is intended to make clear that nothing in this rule making affects applicable appeal rights, especially for those who believe usage of a document listed in the rule gives rise to a contested case proceeding in a particular situation. The Department did not make any other changes to adopted Chapter 17 from what was proposed in the Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs exists. Chapter 17 promotes communication between regulated entities and the Department by encouraging compliance with rules and regulations. The new chapter will provide a benefit to regulated entities and to the public by clarifying the variety of compliance and enforcement documents that the Department may consider in responding to possible violations, while still preserving the Department's enforcement discretion.

These rules are intended to implement Iowa Code section 455B.105.

These rules will become effective on March 13, 2013.

The following amendment is adopted.

Adopt the following **new** 567—Chapter 17:

CHAPTER 17 COMPLIANCE AND ENFORCEMENT PROCEDURES

567—17.1(455B) Scope. Prior to the initiation of administrative penalties pursuant to 567—Chapter 10, the department may consider other compliance and enforcement activities. This chapter sets out the possible compliance and enforcement procedures that the department may consider and utilize.

567—17.2(455B) Basis. While serious violations of rules, regulations and permits may result in administrative penalties, many activities by regulated entities may not rise to the level of requiring such formal enforcement action. In some instances, development of additional facts is appropriate, and in other instances, notification of the nature of the violation with an opportunity to correct the violation may be sufficient. The following compliance and enforcement procedures are available to the department and may be considered in those instances where it is necessary for the department to undertake a compliance or enforcement initiative:

17.2(1) *Informal meeting.* Department staff may attempt to resolve a potential violation or obtain additional information with an informal meeting. This meeting may be at the facility where the inspection took place. The discussion will usually focus on corrective actions to be taken, and in most instances, only department staff and the facility representative are present.

17.2(2) Letter of inquiry (LOI). If an informal meeting is not practical or is insufficient, the department may issue a letter of inquiry (LOI). The purpose of the LOI is to allow the regulated entity the opportunity to provide information that would be helpful for a determination of whether a violation has occurred. The letter should be labeled “Letter of Inquiry” and should, to the extent possible, seek specific information that will aid in the enforcement review.

17.2(3) Letter of noncompliance (LNC). If the information available to the department indicates a violation has taken place, the department may issue a letter of noncompliance (LNC). This letter is used to address violations of a less significant nature, such as a single incident of late reporting. An LNC will most often be used when no environmental harm or threat to human health or safety has occurred or is imminent, the regulated entity is not a repeat offender, the corrective action is not deemed an emergency, or the violation is considered insignificant. The letter is similar to a notice of violation but is captioned “Letter of Noncompliance” and is intended to provide the regulated entity with an opportunity to correct the identified deficiencies prior to further enforcement activity. In the LNC, the department also may suggest remedial measures and set a date for returning to compliance. The department will usually request a response from the regulated entity within a specific time period as to how the identified problems will be resolved. The LNC will typically be followed by a notice of violation if the regulated entity does not respond.

17.2(4) Notice of violation (NOV). When the other compliance and enforcement activities described in this chapter are not appropriate for the violation, or when the regulated entity has not returned to compliance, the department may issue a notice of violation (NOV). An NOV will most often be used when environmental harm or a threat to human health or safety has occurred or is imminent, the regulated entity is a repeat offender, the corrective action is deemed an emergency, or the violation is considered significant. The NOV identifies the nature of the violation and any corrective action being required of the regulated entity.

567—17.3(455B) Option to respond. Upon receiving a written inquiry, letter, or notice from the department as described in this chapter, the regulated entity has the option to respond to the department even if a response is not specifically requested. A letter of noncompliance (LNC) or notice of violation (NOV) will typically suggest a written response and corrective action from the regulated entity within a specified time period. In responding to an LNC or NOV, the regulated entity should, as appropriate, clearly outline any disagreements with the department’s LNC or NOV, provide any pertinent additional information, describe any current or planned corrective action, and provide a schedule for returning to compliance. The department will review written information submitted in response to the compliance and enforcement procedures described in this chapter and will include this information in the file of record. Nothing in this chapter adds to or takes away from the appeal rights provided in Iowa Code chapter 17A.

567—17.4(455B) Department discretion. At the department’s sole discretion, the department may follow the compliance and enforcement procedures described in this chapter, commence with an LNC or NOV, or forego these options and commence with an administrative action (567—Chapter 10), or the department may request referral to the attorney general. The procedures in this chapter are intended to inform the regulated community of possible forms of compliance and enforcement procedures available to the department.

These rules are intended to implement Iowa Code section 455B.105.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/6/13.